IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10678 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI ALIAS SATISH CHELAJI MARU
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for the Petitioner

MR ND Gohil, AGP for respondent Nos.1 to 3
MR M.IQBAL A SHAIKH for Respondent No.4

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (“PBM Act” for short), has

challenged his detention order on various grounds.

By an order dated 11-4-2006, the petitioner is detained under provisions of the aforesaid Act. With the detention order, the petitioner is also served with the grounds of detention. In the grounds of detention, it is alleged that the petitioner has tried to deal with blue kerosene which is an essential article and which is required to be distributed only through fair-price shops. Even though the petitioner was not authorised to deal with the same, yet he has tried to deal with the same and tried to sell the same. The detaining authority after being subjectively satisfied, detained the petitioner by passing detention order under Sub-section (2) of Section (3) of the PBM Act.

Mr Prajapati, learned advocate for the petitioner submitted that against the order of detention a representation was made on 4.5.2006 to the Secretary as well as the Advisory Committee. It is submitted that the Central Government has delayed the decision on such representation as according to the petitioner the representation was made on 22nd April 2006 to the Central Government and ultimately the same was rejected by the Central Government on 2nd June 2006. It is therefore submitted that there is an inordinate delay in deciding the application.

On behalf of the Central Government Shri A.K.Ganguly, Under Secretary in the Department of Consumer Affairs, Food and Public Distribution, New Delhi has filed affidavit-in-reply. In paragraph 5 of the said reply it is stated as under:-

> "5. As regards contention made in sub-para (i) of para 4 of the petition, it is submitted that the representation dated 22.4.2006 made by the advocate of the detenu in Gujarati language was

> received in the Central Government on 12.5.2006 and in the concerned Section on 15.5.2006 through the Office of the District Magistrate, Jamnagar vide their letter dated 29.4.2006. The State Government was requested to furnish English version of the representation vide telegram dated 15.5.2006. The State Government was reminded on 22.5.2006. English version of the representation was received in the Central Government on 25.5.2006 from the State Government vide their letter dated 23.5.2006. After considering the representation along with reports and grounds of detention and other relevant records of the case, the same was rejected by the Competent Authority in the Central Government on 2.6.2006 (27.5.2006 and 28.5.2006 being Saturday and Sunday were closed holidays). .."

Learned counsel for the petitioner submitted that even though the representation was already received by the Central Government on 25.5.2006, after getting the all necessary documents, yet the same was decided on 2nd June 2006. He submitted that even after excluding the holidays of 27th May and 28th May 2006, there is a delay in deciding the representation of the petitioner at the hand of the Central Government. He further submitted that on this ground, the order of detention passed against the petitioner is required to be quashed. In support of his say, Mr Prajapati has relied upon the decision of the Supreme Court in **Rajammal Vs. State of Tamil Nadu and Another,** reported in **AIR 1999 SC 684**, wherein it is held as under in paragraphs 9 and 10 :

> "9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain

> the delay, if any, in disposing the representation. It is not enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.
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> 10. What happened in this case was that the Government which received remarks from different authority submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

It is not in dispute that the Central Government received the English version of the representation of the petitioner on 25th May, 2006, as Mr.M.Iqbal Shaikh, learned Counsel appearing for the Central Government has accepted the said aspect. However, ultimately, the representation of the petitioner was decided on 2nd June, 2006. Therefore, there is a delay in deciding the representation of the petitioner. There is no satisfactory explanation coming forward with regard to delay in sending the representation to the concerned department. Except stating that there were two holidays in between, there is no other explanation coming forward for the rest of the days.

Since the said delay is not satisfactorily explained, this petition is required to be allowed and the order of detention is required to be quashed.

Considering the aforesaid aspect of the matter, this petition is allowed. The impugned order of detention dated 11.04.2006 passed by the District Magistrate, Jamnagar is set aside. The detenu – Babubhai @ Satish Chelaji Maru is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct Service is permitted.

(P.B.Majmudar, J.)

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